

**Wednesday, March 5, 2003**

The Board met at its offices at 5901 Green Valley Circle, Culver City, at 9:00 a.m., with Ms. Migden, Chairwoman, Mr. Leonard and Mr. Chiang present, Ms. Mandel present on behalf of Mr. Westly in accordance with Government Code section 7.9.

### **PETITION FOR RELEASE OF SEIZED PROPERTY**

**Abbas Tahery, 188098**

June 3, 2002 Notice of Seizure and Forfeiture

For Petitioner:

Abbas Tahery

Brian Paya, Attorney

For Property and Special Taxes Department

Blanca Breeze, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issue: Whether the cigarettes should be forfeited to the State of California because they are described by subdivision (b) of Revenue and Taxation Code section 30436.

Action: Upon motion of Ms. Migden, seconded by Mr. Chiang and unanimously carried, Ms. Migden, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, Mr. Parrish absent, the Board ordered that the petition be submitted for decision.

### **SPECIAL TAXES APPEALS HEARING**

**Employers Resource Management Company, 87777, 87780**

1-1-97 to 12-31-97, \$1,000.00 Fee, \$00.00 Negligence Penalty

1-1-98 to 12-31-98, \$9,500.00 Fee, \$00.00 Negligence Penalty

For Petitioner:

Susan Kramek, Representative

John Polson, Attorney

Mark Haag, Representative

George Gersema, CEO

For Department of Toxic Substances Control:

Dennis Mahoney, Staff Counsel

For Property and Special Taxes Department:

Monica Brisbane, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether petitioner is subject to the annual fee imposed upon certain corporations pursuant to Health and Safety Code section 25205.6 for the years 1997 and 1998.

Whether petitioner is entitled to relief from the interest.

Action: Upon motion of Ms. Migden and unanimously carried, Ms. Migden, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, Mr. Parrish absent, the Board ordered that the petition be submitted for decision.

### **SALES AND USE TAX APPEALS HEARINGS**

**Brynnco, Inc., 40886, 83788**

7-1-96 to 3-31-97, \$6,188.73 Tax, \$00.00 Negligence Penalty

4-1-97 to 9-30-97, \$5,164.66 Tax, \$00.00 Negligence Penalty

For Petitioner:

Quincy Hinnant, President

For Sales and Use Tax Department:

Kevin Hanks, Hearing Representative

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

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Issue: Whether the audited understatement of taxable sales is excessive.  
Action: Upon motion of Ms. Migden and unanimously carried, Ms. Migden, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, Mr. Parrish absent, the Board ordered that the petition be submitted for decision.

**Treasure of Entertainment, Inc., 106204**

11-17-97 to 4-24-00, \$165,636.62 Tax, \$41,409.20 Fraud Penalty

For Petitioner: David Prince, Attorney

For Sales and Use Tax Department: Trecia Nienow, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether the Board properly imposed the sales tax liability on petitioner.

Whether the fraud penalty was properly imposed.

Action: Upon motion of Ms. Migden and unanimously carried, Ms. Migden, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, Mr. Parrish absent, the Board ordered that the petition be submitted for decision.

**Mohamed Saiful Islam and Mariam Islam, 128109, 89002277660**

1-1-95 to 12-31-97, \$26,887.66 Tax

1-1-98 to 10-11-00, \$11,040.15 Tax, \$1,104.01 Negligence Penalty

For Petitioner: Mohamed Saiful Islam

For Sales and Use Tax Department: Kevin Hanks, Hearing Representative

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues in the petition of 89002277660:

Whether petitioner's allegation that all taxable sales were properly reported from its cash register key ring system warrants relief from the tax.

Whether the evidence shows that petitioner should be allowed to offset taxable sales by its claimed nontaxable transactions.

Issues in the petition of 128109:

Whether the evidence shows that the understated taxable sales are excessive.

Whether the negligence penalty should be abated.

Action: Upon motion of Ms. Migden and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

**William G. Morschauser, 63388**

1-1-97 to 12-31-99, \$40,879.24 Tax, \$4,087.94 Negligence Penalty

For Petitioner: William G. Morschauser

For Sales and Use Tax Department: Kevin Hanks, Hearing Representative

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether audited understatement of taxable sales is excessive.

Whether the evidence shows that larger allowances are warranted for self-consumption, shrinkage, and other product loss.

Whether the audited understatement of taxable sales resulted from petitioner's negligence.

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Action: Upon motion of Ms. Migden and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

**Science Applications International Corporation, 19554, 19555, 89000519000**

4-1-93 to 3-31-96, \$191,780.69 Tax

7-1-96 to 9-30-96, \$00.00 Tax

4-1-93 to 3-31-96, \$1.00 or more Claim for Refund

For Petitioner: Appearance Waived

For Sales and Use Tax Department: Randy Ferris, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issue in the petitions of **19554, 19555**:

Whether petitioner is entitled to a tax exemption for its use of certain direct supplies and overhead supplies in performance of its contracts, if petitioner is a subcontractor to a prime contractor who qualifies as a U.S. Government supply contractor, and even if petitioner's subcontracts do not contain title passage or progress payment clauses.

Issues in the petition of **19554**:

Whether petitioner received and relied upon misinformation qualifying for relief from the tax within the meaning of Revenue and Taxation Code section 6596.

Whether petitioner is entitled to a bad debt deduction for the remaining contract amount with the California Highway Patrol, that petitioner wrote off on January 1, 1993, but claimed on its third quarter 1993 California Sales and Use Tax return.

Whether additional miscellaneous audit adjustments are warranted with respect to : (a) alleged overstatement of San Diego Justice Facilities District tax credit; (b) claimed deduction for overhead items; (c) purchases from BHK subject to sales or use tax; and (d) the value assigned to the transfer of assets to its subsidiary corporation.

Issue in the petition of **89000519000**:

Whether the claim for refund should be granted.

Action: Upon motion of Mr. Chiang, seconded by Ms. Migden and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board ordered that the petition be denied and redetermined as recommended by the Appeals Division.

**Jacqueline A. and Garo Tutunjian, 83364**

1-1-96 to 9-30-99, \$26,760.64 Tax, \$2,676.07 Negligence Penalty

For Petitioner: Appearance Waived

For Sales and Use Tax Department: Kevin Hanks, Hearing Representative

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether petitioner was the consumer, rather than the retailer, of parts and materials used in repair jobs which were billed lump-sum.

Whether the 10 percent penalty for negligence was properly applied.

Action: Upon motion of Ms. Migden, seconded by Mr. Chiang and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board ordered that the petition be denied and redetermined as recommended by the Appeals Division.

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United Staffing Solutions, Inc., 139134, 143254

1-1-99 to 12-31-00, \$5,799.00 Fee, \$00.00 Failure to File and Failure to Timely Pay Penalties

1-1-98 to 12-31-98, \$9,500.00 Fee, \$00.00 Failure to File and Failure to Timely Pay Penalties

For Petitioner: No Appearance

For Department of Toxic Substances Control: Dennis Mahoney, Staff Counsel

For Property and Special Taxes Department: Monica Brisbane, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issue: Whether petitioner is subject to the annual fee imposed upon certain corporations pursuant to Health and Safety Code section 25205.6 (operative January 1, 1998) for the fee periods January 1, 1998, through December 31, 2000.

Action: Upon motion of Ms. Migden, seconded by Mr. Chiang and duly carried, Ms. Migden, Mr. Chiang and Ms. Mandel voting yes, Mr. Leonard voting no, Mr. Parrish abstaining, the Board ordered that the petition be denied and redetermined as recommended by the Appeals Division.

#### **FINAL ACTION ON PETITION FOR RELEASE OF SEIZED PROPERTY HEARD MARCH 5, 2003**

Upon motion of Ms. Migden, seconded by Ms. Mandel and unanimously carried, Ms. Migden, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, Mr. Parrish abstaining, the Board determined that in the petition of *Abbas Tahery, 188098*, the staff properly seized the cigarettes.

#### **FINAL ACTION ON PETITIONS HEARD MARCH 5, 2003**

Upon motion of Ms. Migden, seconded by Mr. Chiang and duly carried, Ms. Migden, Mr. Chiang and Ms. Mandel voting yes, Mr. Leonard voting no, Mr. Parrish abstaining, the Board ordered that the petition of *Employers Resource Management Company, 87777, 87780*, be denied and redetermined as recommended by the Appeals Division.

Upon motion of Ms. Migden, seconded by Ms. Mandel and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board ordered that the petition of *Brynnco, Inc., 40886, 83788*, be denied and redetermined as recommended by the Appeals Division.

Upon motion of Ms. Migden, seconded by Ms. Mandel and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard and Ms. Mandel voting yes, Mr. Chiang not participating, the Board ordered that the petition of *Treasure of Entertainment, Inc., 106204*, be denied and redetermined as recommended by the Appeals Division.

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Upon motion of Mr. Parrish, seconded by Mr. Chiang and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board ordered that the petition of *Mohamed Saiful Islam and Mariam Islam, 128109, 89002277660*, be denied and redetermined with adjustment as recommended by the Appeals Division.

Upon motion of Mr. Chiang, seconded by Ms. Migden and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board ordered that the petition of *William G. Morschauser, 63388*, be denied and redetermined as recommended by the Appeals Division.

### **SALES AND USE TAX APPEALS HEARING**

Loma Linda Mercantile, 51644, 89000411980

4-1-94 to 6-30-97, \$445,125.55 Tax, \$44,512.57 Negligence Penalty

10-1-96 to 6-30-97, \$1.00 or more Claim for Refund

For Petitioner:

Glenn Bystrom, Representative

Kevin Boggs, Assistant Controller

For Sales and Use Tax Department:

Jeffrey H. Graybill, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: A disqualifying contribution was disclosed to Ms. Migden. No other contributions were disclosed.

Issues: Whether the audit methodology overstated the audited taxable sales.

Whether overhead expenses incurred by Loma Linda University Medical Center for petitioner represent additional gross receipts to petitioner.

Whether the 10 percent penalty for negligence is applicable.

Action: Upon motion of Mr. Parrish, seconded by Mr. Leonard and unanimously carried, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, Ms. Migden absent and not participating in accordance with Government Code section 15626, the Board ordered that the negligence penalty be canceled.

Upon motion of Mr. Parrish, seconded by Mr. Leonard and unanimously carried, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, Ms. Migden absent and not participating in accordance with Government Code section 15626, the Board ordered that Issue 1 be submitted for decision, granting the petitioner 30 days to file supporting documents, the Department 30 days to respond, and the Appeals Division 30 days thereafter to review the petitioner's supporting documents, the Department's response and provide its recommendation to the Board.

Mr. Leonard moved that Issue 2 be granted. The motion was seconded by Mr. Parrish but failed to carry, Mr. Parrish and Mr. Leonard voting yes, Mr. Chiang and Ms. Mandel voting no, Ms. Migden absent and not participating in accordance with Government Code section 15626.

The Board ordered that Issue 2 be submitted for decision with Issue 1.

The Board recessed at 11:30 a.m. and reconvened at 1:00 p.m. with Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel present.

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**CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARINGS**

Lori Gentile, 173225

2000, \$858.00 Assessment

For Appellant:

Lori Gentile

For Franchise Tax Board:

Jean Cramer, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issue: Whether appellant properly claimed head of household filing status.

Appellant's Exhibit: Presentation (Exhibit 3.2)

Action: Upon motion of Ms. Migden, seconded by Mr. Parrish and unanimously carried, Ms. Migden, Mr. Parrish and Mr. Leonard voting yes, Mr. Chiang and Ms. Mandel not participating, the Board reversed the action of the Franchise Tax Board.

Exhibits to these minutes are incorporated by reference.

Bruno W. and Grace Scherrer, 174167

1996, \$43,587.00 Tax, \$21.00 Penalty

1997, \$58,146.00 Tax, \$1,982.00 Penalty

1998, \$41,880.00 Tax

For Appellant:

Stephen M. Walrath, CPA

For Franchise Tax Board:

Renel Sapiandante, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether appellant has shown that the property that he contributed to a museum was not property that appreciated after he acquired it.

Whether appellant has shown that the penalty imposed for his failure to reply to a written request to supply information should be abated.

Appellant's Exhibit: Position Letter (Exhibit 3.3)

Action: Upon motion of Ms. Migden and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board submitted the appeal for decision.

Stephen D. Bragg, 119357, 110567

1993, \$61,869.00 Tax

1995, \$49,872.00 Tax, \$12,468.00 Late Filing Penalty

For Appellant:

Jon H. Lieberg, Attorney

Stephen D. Bragg

For Franchise Tax Board:

Charlene Woodward, Tax Counsel

Nora Lopez, Witness

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether appellant was a resident of California in 1993.

Whether respondent apportioned to California the proper percentage of income received by appellant from a covenant-not-to-compete.

Appellant's Exhibit: Declarations (Exhibit 3.4)

Exhibits (Exhibit 3.5)

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Action: Upon motion of Ms. Migden and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board submitted the appeal for decision.

**William Alan Sobel, A Law Corporation, 129920**

1994, \$4,000.00 Claim for Refund

For Claimant:

Walter Weiss, Attorney at Law  
Martin Fort, CPA

For Franchise Tax Board:

Suzanne Small, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issue: Whether the revivor obtained by appellant after a claim for refund was filed, retroactively validated the then invalid claim for refund.

Appellant's Exhibit: Supplement to Claimants Position (Exhibit 3.6)

Action: Upon motion of Ms. Migden and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board submitted the appeal for decision.

**Roger L. Perris, 174285**

1999, \$3,649.00 Tax, \$912.25 Late Filing Penalty

For Appellant:

Roger L. Perris

For Franchise Tax Board:

Suzanne Small, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether appellant has met his burden to prove error in the proposed assessment.  
Whether appellant has shown reasonable cause for relief from the late filing penalty.

Whether a frivolous appeal penalty should be imposed.

Appellant's Exhibit: Affidavit (Exhibit 3.7)

Miscellaneous Documents (Exhibit 3.8)

Action: Upon motion of Ms. Migden and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board submitted the appeal for decision.

**Tobo, Inc., 160330**

1995, \$23,708.08 Assessment

For Appellant:

Alan Goldberg, Attorney

For Franchise Tax Board:

Jeanne Siebert, Tax Counsel  
Terry Collins, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issue: Whether a loan made by appellant to another corporation became worthless during 1995 such that appellant was entitled to a deduction for a bad debt.

Appellant's Exhibit: Miscellaneous Documents (Exhibit 3.9)

Respondent's Exhibit: Tax and Financial Documents (Exhibit 3.10)

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Action: Upon motion of Mr. Chiang, seconded by Ms. Migden and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board submitted the appeal for decision.

**Theodore P. Polich, Jr. and Marilyn Polich, 184103**

1983, \$27,679.00 Assessment

1984, \$26,964.00 Assessment

1985, \$27,982.00 Assessment

1986, \$17,194.00 Assessment

For Appellant:

Robert B. Martin, Jr., Attorney

For Franchise Tax Board:

Jean Cramer, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issue: Whether appellant has shown that respondent erroneously issued Notices of Proposed Assessment.

Action: Upon motion of Mr. Chiang, seconded by Ms. Migden and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board submitted the appeal for decision.

**Dale McRaven, 166385**

1982, \$15,198.00 Tax

For Appellant:

Steve Mather, Attorney

Marvin Snyder, Representative

For Franchise Tax Board:

Mark McEvilly, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issue: Whether appellant has met his burden to prove error in respondent's grant of separate liability innocent spouse relief to his former spouse.

Appellant's Exhibit: Miscellaneous Documents (Exhibit 3.11)

Action: Upon motion of Mr. Parrish, seconded by Ms. Migden and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board submitted the appeal for decision.

**Tony and May Dow, 166846**

1995, \$1.00 or more Claim for Refund

1996, \$1.00 or more Claim for Refund

1997, \$1.00 or more Claim for Refund

1998, \$1.00 or more Claim for Refund

For Claimant:

Jeffrey R. Matsen, Attorney

For Franchise Tax Board:

Craig Scott, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether appellants have shown reasonable cause for abatement of the notice and demand penalties for 1995 through 1998.

Whether appellants have shown reasonable cause for abatement of the late filing penalty imposed for 1995.



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Whether appellants have met their burden of proof that they filed a timely claim for refund for 1996.

Appellant's Exhibit: Declaration, IRS Forms (Exhibit 3.12)

Action: Upon motion of Ms. Migden and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board submitted the appeal for decision.

**James N. Harger, 171249**

1997, \$3,535.00 Assessment

1998, \$3,587.00 Assessment

For Appellant:

James N. Harger

For Franchise Tax Board:

Renel Sapiandante, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issue: Whether appellant has shown that he is entitled to a charitable deduction with respect to a residential structure allegedly donated by him to charity.

Appellant's Exhibit: Letters (Exhibit 3.13)

Respondent's Exhibit: Pictures (Exhibit 3.14)

Action: Upon motion of Mr. Chiang, seconded by Ms. Migden and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board submitted the appeal for decision.

**Michael and Barbara Longbrook, 153386**

1997, \$2,103.00 Assessment, \$500.00 Frivolous Appeal Penalty

1998, \$1,870.00 Assessment, \$500.00 Frivolous Appeal Penalty

For Appellant:

Michael Longbrook

For Franchise Tax Board:

Mark McEvilly, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether the Board has jurisdiction to consider appellants' substantive challenge of the proposed assessments, and if so, whether appellants have met their burden to prove error in the proposed assessments.

Whether the Board has jurisdiction to consider appellants' challenge of frivolous return penalties and if so, whether such penalties were properly imposed.

Whether a frivolous appeal penalty should be imposed.

Appellant's Exhibit: Civil Case Summary (Exhibit 3.15)

Action: Upon motion of Mr. Chiang, seconded by Ms. Migden and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board submitted the appeal for decision.

## **HOMEOWNER AND RENTER PROPERTY TAX ASSISTANCE CLAIM HEARING**

**Anthony Graham, 166415**

2001, \$1.00 or more Claim for Credit

For Claimant:

No Appearance

For Franchise Tax Board:

Jean Cramer, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

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Issue: Whether respondent properly denied appellant's claim for property tax assistance.

Action: Upon motion of Ms. Mandel, seconded by Ms. Migden and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board postponed this hearing to a future hearing date.

### CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARING

Larry L. and Kathy L. Vandermoon, 133267

1996, \$8,644.00 Tax, \$2,099.72 Late Filing Penalty

For Appellant: No Appearance

For Franchise Tax Board: Suzanne Small, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether appellants have met their burden to prove error in the proposed assessment for 1996, which was based on changes to appellants' 1996 federal return.

Whether the late filing penalty was correctly assessed.

Whether a frivolous appeal penalty should be imposed.

Action: Upon motion of Ms. Migden, seconded by Mr. Chiang and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board sustained the action of the Franchise Tax Board.

Carl P. Attman, 169548

1997, \$19,622.00 Assessment

For Appellant: Appearance Waived

For Franchise Tax Board: Mark McEvilly, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issue: Whether appellant has shown that \$200,000.00 he received as part of a settlement arising out of a claim of emotional distress was properly excluded from gross income.

Action: Upon motion of Ms. Migden, seconded by Mr. Parrish and duly carried, Ms. Migden, Mr. Chiang and Ms. Mandel voting yes, Mr. Leonard voting no, Mr. Parrish abstaining, the Board sustained the action of the Franchise Tax Board.

### FINAL ACTION ON APPEALS HEARD MARCH 5, 2003

Mr. Leonard moved that the appeal of *Bruno W. and Grace Scherrer, 174167*, be submitted for decision, granting the appellant 30 days to submit supporting documents, the Franchise Tax Board 30 days to respond, and the Appeals Division 30 days thereafter to review the appellant's supporting documents, the Franchise Tax Board's response and provide its recommendation to the Board. The motion was seconded by Mr. Parrish but failed to carry, Mr. Leonard and Mr. Parrish voting yes, Ms. Migden, Mr. Chiang and Ms. Mandel voting no.

Upon motion of Ms. Migden, seconded by Mr. Chiang and duly carried, Ms. Migden, Mr. Chiang and Ms. Mandel voting yes, Mr. Parrish and Mr. Leonard voting no, the Board sustained the action of the Franchise Tax Board.

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Upon motion of Ms. Migden, seconded by Ms. Mandel and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board ordered the appeal of *Stephen D. Bragg, 119357, 110567*, be submitted for written opinion, sustaining the action of the Franchise Tax Board. The Board's decision on this matter shall not become final until the matter is brought back to the Board for adoption of the proposed opinion.

Upon motion of Ms. Migden, seconded by Ms. Mandel and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, in the appeal of *William Alan Sobel, A Law Corporation, 129920*, the Board sustained the action of the Franchise Tax Board.

Upon motion of Ms. Migden, seconded by Mr. Parrish and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, in the appeal of *Roger L. Perris, 174285*, the Board sustained the action of the Franchise Tax Board and imposed a \$1,000.00 frivolous appeal penalty.

Upon motion of Ms. Migden, seconded by Mr. Parrish and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, in the appeal of *Tobo, Inc., 160330*, the Board sustained the action of the Franchise Tax Board.

Upon motion of Ms. Migden, seconded by Mr. Parrish and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, in the appeal of *Theodore P. Polich, Jr. and Marilyn Polich, 184103*, the Board sustained the action of the Franchise Tax Board.

Ms. Migden moved to sustain the action of the Franchise Tax Board in the appeal of *Dale McRaven, 166385*. The motion was seconded by Ms. Mandel but failed to carry, Ms. Migden and Ms. Mandel voting yes, Mr. Chiang and Mr. Leonard voting no, Mr. Parrish abstaining.

The Board deferred consideration of this matter.

Mr. Parrish moved to grant as to Issue 1 for 1995 only, otherwise sustain the action of the Franchise Tax Board in the appeal of *Tony and May Dow, 16684*. The motion was seconded by Mr. Leonard but failed to carry, Mr. Parrish and Mr. Leonard voting yes, Ms. Migden, Mr. Chiang and Ms. Mandel voting no.

Upon motion of Ms. Migden, seconded by Mr. Chiang and duly carried, Ms. Migden, Mr. Chiang and Ms. Mandel voting yes, Mr. Leonard voting no, Mr. Parrish abstaining, the Board sustained the action of the Franchise Tax Board.

Upon motion of Ms. Migden, seconded by Mr. Parrish and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board ordered the appeal of *James N. Harger, 171249*, be submitted for written opinion sustaining the action of the Franchise Tax Board. The Board's decision on this matter shall not become final until the matter is brought back to the Board for adoption of the proposed opinion.

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Upon motion of Mr. Parrish, seconded by Ms. Migden and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, in the appeal of *Michael and Barbara Longbrook, 153386*, the Board sustained the action of the Franchise Tax Board and imposed a \$1,000.00 frivolous appeal penalty.

The Board adjourned at 4:30 p.m.

*The foregoing minutes are adopted by the Board on April 23, 2003.*

Note: The following cases were removed from the calendar prior to the meeting: *Deltec Electronics Corporation, 91345*; *Kee Hee Enterprise Inc., 83356*; *Virginia M. Larson, 170719*; *Edward L. Randolph II, 170084*; *Donald A. and Mary H. Norberg, 164082*; and; *John Murray, 173815*.